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EXAMINER

GREENE, DANIEL LAWSON

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/605,879	Applicant(s) WIEDER, JAMES W.	
	Examiner DANIEL L. GREENE JR.	Art Unit 3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/11/2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 163-170, 174-176, 211-213, 217, 218 and 232-263 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 163-170, 174-176, 211-213, 217-218, 232-263 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicants 2/11/2010 response to the 11/12/2009 Office action has been considered and entered. Claims 163-170, 174-176, 211-213, 217, 218 and 232-263 are pending and have been examined on the merits as explained below.

Response to Arguments

2. Applicant's arguments with respect to the rejection set forth in section 7 (35 USC 112, 2nd rejection) of the previous Office action mailed 11/12/2009 have been fully considered but they are not persuasive.

Applicant argues on page 13:

112 2nd paragraph Rejection:

The applicant has written simpler and clearer claims.

Response :

Claim 163 still recites “wherein the piece or composition that was custom selected for said user by using said user’s ratings” which fails to overcome the Examiners contentions.

This rejection can be overcome by amending the claim to read “wherein the piece or composition **is** custom selected for said user by using said user’s ratings” or something to this effect.

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3. Applicant's arguments with respect to the rejection set forth in section 8 (35 USC 103(a) Plastina rejection) of the previous Office action mailed 11/12/2009 have been fully considered but they are not persuasive.

Applicant argues on pages 13:

“The Applicant respectfully submits that Plastina does not have/suggest/imply using the details of control actions that are defined in the Applicant's claims. Specifically, Plastina does not have/suggest/imply(at the least) the following elements in the Applicant's claims:

"capturing, at a user-device, details of control actions by a user on pieces or compositions; wherein said control actions are user actions that:

- affect the playback of a piece or composition during its playback, or
- find or select a piece or composition, or
- designate a piece or composition for playback; "

"a plurality of ratings associated with the user," wherein a rating, indicating a magnitude of preference of the user, is associated with each piece or composition; wherein the magnitude of the rating for the associated piece or composition was determined by using at least some of the details of said control actions by the user on the associated piece or composition".”

Response:

The following case law citations are pertinent to the prior art advanced in prosecution en toto as well as any arguments proffered herein.

The Examiner has cited particular columns and line numbers in the references as applied to the claim(s) as nearly as practicable. Although the specified citations are representative of the teachings in the art as applied to the specific limitations within the individual claim(s), other passages and figures may apply as well. See MPEP 2260 [R-5], and 37 CFR 1.104(c)(2)

“In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the

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particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.”

In re Nilssen (CA FC) 7 USPQ2d 1500 (7/13/1988)

Specifically, Nilssen asserts that "it would be in manifest conflict with reality to assume that such a person would be familiar with all prior art references pertaining to [a] given art... **The board attributes to the "hypothetical person" knowledge of all prior art in the field of the inventor's endeavor and of prior art solutions for a common problem even if outside that field.** That view accords with the plethora of this court's precedent. See, e.g., *In re Deminski* , 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); *Standard Oil Co. v. American Cyanamid Co.* , 774 F.2d 448, 454, 227 USPQ 293, 297 (Fed. Cir. 1985); *In re Wood* , 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). (emphasis added)

In re Shepard, 138 USPQ 148 (CCPA 1963)

“In considering disclosure of reference patent, it is pertinent to point out not only specific teachings of patent but also the reasonable inferences which one skilled in the art would logically draw therefrom.”

In re Dance (CA FC) 48 USPQ2d 1635 (10/30/1998)

“When the references are in the same field as that of the applicant's invention, knowledge thereof is presumed. “

In re Wood, 202 USPQ 171 (CCPA 1979)

“In resolving the question of obviousness under 35 USC 103, we presume full knowledge by the inventor of all the prior art in the field of his endeavor. However, with regard to prior art outside the field of his endeavor, we only presume knowledge from those arts reasonably pertinent to the particular problem with which the inventor was involved”

Lamont v. Berguer, 7 USPQ2d 1580 (BdPatApp&Int 1988)

“Section 103 requires us to presume that the artisan has full knowledge of

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the prior art in his field of endeavor and the ability to select and utilize knowledge from analogous arts.”

In this case, Applicant admits that Plastina does indeed teach “The manual entry of a rating by the user” in, for example, Col. 9, lines 15-24. Plastina clearly discloses that ratings affect the playback of a piece or composition in, for example, Col. 8, lines 16-20, reproduced immediately below:

By developing metadata and associating, in some way, the metadata with the content that a user experiences, the user can be provided a rich and robust media experience. This will become more clear below.

Further, Plastina clearly teaches that “finding or selecting a piece or composition, or designating a piece or composition for playback” will affect the “Last played” and “Play count” parameters. See for example, applicants 2/11/2010 arguments page 14 reproduced immediately below.

“Plastina states: “The last played time parameter comprises the date or time that a particular piece of content was played or experienced by the user.” (Plastina col 9, line 9-12). Note that each time a song is played, as part of one or more playlists, the “LastTimePlayed” parameter is automatically updated by the system. But, note that for the above query (“Songs I like that I’ve not heard of recent”) to work correctly, the parameter needs to be updated after the song as been “heard” by the user (e.g., after the song has been played back). Also, note that the update of the parameter will occur without the occurrence of any “control actions by the user” as in the Applicant’s claims.”

According to applicants own arguments Plastina does indeed read on the claimed invention as it satisfies AT LEAST ONE of the “control action” limitations set forth in claim 163 in that the parameters will be updated after the

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user has selected and experienced the piece or composition. That is, the control action can be considered as either affecting the playback so that the LastTime Played parameter is not changed, or selecting a piece or designating a piece or composition for playback so that it is changed. Either way it is the control action by the user that ultimately affects the ratings irregardless of whether it is automatically done or not. The fact remains that the system monitors user actions and affects playback of the piece or composition based on said users actions.

Again, Plastina clearly discloses that it is the metadata (control actions) that affect the rating and playback of the associated pieces or compositions.

It is noted that the individual limitations within, for example, claim 163 are connected together with the grammatical coordinating conjunction "OR", which means that as long as AT LEAST ONE limitation is met then the claimed invention is met regardless of the other limitations within the claim that may or may not be met.

Coordinating conjunctions, also called coordinators, are conjunctions that join two or more items of equal syntactic importance.

or: presents opinions, alternates, or substitutes for ideas of equal importance

4. Applicant's arguments with respect to the rejection set forth in section 9 (35 USC 103(a) Logan rejection) of the previous Office action mailed 11/12/2009 have been fully considered but they are not persuasive.

Applicant argues on page 16:

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“The Applicant respectfully submits that Logan does not have/suggest/imply (at the least) the following elements in the Applicant's claims:

"a plurality of ratings associated with the user; wherein a rating, indicating a magnitude of preference of the user, is associated with each piece or composition; wherein the magnitude of the rating for the associated piece or composition was determined by using at least some details of said control actions by the user on the associated piece or composition;"

Response:

From page 13 of the previous Office action reproduced immediately below,

“A **usage log** is compiled to record the subscriber's use of the provided program materials, to return data to the host for billing, **to adaptively modify the subscriber's preferences based on actual usage** (reads on limitations (1) and (2) above, capturing and storing=usage log), and to send subscriber-generated comments and requests to the host for processing.”

From Logan, Col. 9, lines 17-27:

“After the account has been established, utility programs and data may be downloaded from the FTP server 125 to the client/player 103. These utility programs advantageously include programs which perform functions including (a) program decompression, playback and navigation; (b) **recording of a usage log file identifying the program and advertising segments played and the start time, ending time, volume level and playing speed for each s(c) segment**; and (c) the selection and updating of programming preferences and selections for future downloading. “ (Emphasis added)

From Logan, Col. 12, lines 18-45:

“As indicated at 251, **if the user changes the volume level or playback speed by a significant amount, a new record is posted to the usage log at 253**, indicating the continuation of the last program at a new volume level (thus producing two records in sequence having the same program segment ID numbers but having differing start times and volume levels). The user adjusts the volume by means of a software control displayed when the player is active. The user adjusts the control using the mouse or keyboard to adjust the volume. When the volume control experiences a change in level greater than a predetermined deviation, it sends a message to the player routine at 251 to cause the new volume level to be recorded at 253. New volume settings do not affect the program sequence and the recording of the volume level change takes place transparently to the user. Likewise, when the user changes the playing speed, or switches to highlight mode, the new playing speed setting is recorded

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(using the PlayingSpeed variable in a Usage Record, to be discussed).

(51) The cost accounting program which calculates subscriber charges and fees to advertisers may thereby treat **volume levels below a predetermined threshold level, or playing speeds in excess of a certain level, as being equivalent to skipped programming.** In addition, if a subscriber reduces the volume on selected programs or programs in particular subject matter categories, frequently increases the volume for other programs or subject matter categories, or sets the playing speed to play highlights only of other programs, **that data can be used to infer preferences and dislikes which can be used to better select desired programming to be included in future download compilations.** “ (Emphasis added)

Logan, Col. 16, line 30 through Col. 17, line 40 describes various preferences monitored by the system and the method of generating a program schedule based on the subscribers known preferences. These preferences are sometimes expressed as integers with higher integers meaning a higher preference.

Logan, Col. 19, line 45 through Col. 20, line 15:

(93) The Program.sub.-- Segment record also contains **an importance field which is also an array of 16 integers which (at least initially) holds an integer containing the reviewer/editor's assessment of the "importance" of the program segment relative to the subject matter code specified in the corresponding cell in the Subjects array.** Thus, if Subjects[7]=12345 and Importance[7]=231, this program segment has been assigned a importance level of 231 with respect to the subject specified by code 12345. Another segment may also be relevant to the same subject, but with a different level of importance to that subject. These fields may be used by the host as a weighting factor used to route programs of greater probable interest to the subscriber. **Note also The "importance" value associated with any given program may also be adaptively altered based on the actual use as reflected by the usage logs and by subscribers' catalog selections. By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased. In this way, the system adaptively learns, for each category or programs, which programs subscribers have found to be of interest and which ones were seldom used.**

Serialized programs (identified by a common Group ID) may be assigned importance values based on the actual usage of earlier episodes in the same series. **Thus, when a series proves to be popular based on repeat selections of its episodes, all episodes (including those not yet issued) may be assigned a higher importance value. (Emphasis added)**

Clearly Logan teaches "a plurality of ratings (importance field) associated with the user; wherein a rating, indicating a magnitude (integer) of preference of the user, is associated with each piece or composition; wherein the magnitude of the rating for the associated piece or composition was determined by using at least some details of said control actions by the user on the associated piece or composition;" **(By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased)**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 163-170, 174-176, 211-213, 217-218 and 232-251 are rejected under 35**

U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 163 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01.

The omitted steps are: the act of “custom selection” set forth in the last limitation of the claim, i.e. “initiating the playback of at least one piece or composition, **that was custom** selected for said user by using said users ratings”. The claim is understood to set forth that the selection was already made prior to initiation of the playback.

Applicant’s 8/15/2009 amendment added the language in question.

Claims 164-170, 174-176, 211-213, 217-218 and 232-251 are rejected for their dependence on rejected base claim 163.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. **Claims 260-263 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claim 260 recites “One or more computer readable memories or media...”. The specification as filed teaches such media to include both statutory and non-statutory embodiments. Therefore, amending claim 260 to recite “One or more non-transitory computer readable memories or media...” will overcome this rejection.

Claim Rejections - 35 USC § 103

9. Claims 163-167, 174-176, 211-213, 217, 218 and 232-263 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,941,324 to Plastina et al. (Plastina) for the reasons set forth in section 10 of the previous Office action mailed 4/16/2009.

See the discussion set forth in section 3 above.

Regarding claims 163, 252, 256 and 260, Plastina discloses an apparatus-implemented method for personalized music or entertainment, the method comprising:

(1) capturing, at a user-device, details of control actions (known as metadata) by a user on pieces or compositions; wherein said control actions:

- affect the current playback of a piece or composition, or
- find or select a piece or composition, or
- designate a piece or composition for playback;

(2) storing in one or more memories, a plurality of ratings associated with the user; wherein a rating, indicating a magnitude of preference of the user, is associated with each piece or composition; wherein the magnitude of the rating for the associated piece or composition was determined by using at least some of the details of control actions by the user on the associated piece or composition

(3) initiating, the playback of at least one piece or composition that was custom selected for said user by using said user's ratings, in for example, the Abstract reproduced and expounded upon immediately below,

“Various systems and methods described above permit a user's content experience (e.g. music playing experience) to be monitored

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(corresponds to limitation (1) above, monitoring=capturing) and for metadata describing this experience to be collected. This metadata can be dynamically updated (corresponds to limitation (2) above, update=storing) as a user experiences media content and then used to impart (corresponds to limitation (3) above, impart=initiating) to the user a personalized experience that is tailored to that specific user. A user's metadata can, in some instances, be provided across a wide variety of computing devices on which the user may experience the media content, thus standardizing the user's personalized media experience. In addition, intelligent or "smart" playlists can be provided which, in some instances, can be dynamically and automatically updated to reflect current user experiences, thus providing a highly personalized and enjoyable content experience. “

Plastina does not appear to specifically disclose that the control actions are user actions that affect the playback of a piece or composition **in the same manner as applicant.**

Plastina does however set forth in, for example, Col. 8, lines 1-65, a multitude of parameters that are monitored as well as the telling statement "The examples given below are intended as examples only and should not be construed to limit the parameters or types of parameters that can be utilized."

At the time of the invention it would have been obvious to one of ordinary skill in the art to apply the teachings of Plastina with regard to the user parameters that are monitored and have modified Plastina to include parameters that affect the playback, search, selection, or designation of a piece or composition. One would have been motivated to make such a modification for the benefits of more accurately monitoring user habits for the benefit of selecting compositions to be played for the user that are more in tune with the users preferences.

Regarding claim 164 and the limitation wherein said control actions are user actions to repeat or replay a piece or composition that previously played; wherein a said user's rating is influenced toward a higher preference, by a said user control action or actions to repeat or replay, the piece or composition see, for example, Col. 8 lines 30-50 wherein the control action to repeat or replay causes the play count to be increased. See the discussion of play counts and their usages in columns 9 and 10.

Regarding claim 165 and the limitation wherein said control actions are user actions to select or designate a particular piece or composition for playback; wherein a said user's rating is influenced toward a higher preference, by a user control action or actions that select the piece or composition for playback see, for example, Col. 8 lines 30-50 wherein the control action to repeat or replay causes the play count to be increased. See the discussion of play counts and their usages in columns 9 and 10.

Regarding claim 166 and the limitation wherein said control actions are user actions to skip or forward-past the rest of a currently playing piece or composition; wherein a said user's rating is influenced toward a lower preference, by a user control action or actions that skip or forward-past the rest of the piece or composition that is currently playing see, applicant's arguments page 15 wherein if the piece or composition is NOT experienced in its entirety it will be influenced toward a lower preference than if it were experienced in its entirety. That is, the users control actions prevent the rating

from being increased accordingly it is influenced towards a lower preference then it could have had without the users control action to skip or forward-past.

Regarding claim 167 and the limitation wherein said control actions are user actions to stop a currently playing piece or composition; and initiate the play of another piece or composition; wherein a said user's rating associated with the playing piece or composition is influenced toward a lower preference, by a user control action or actions that stop the piece or composition that is playing; and initiate the play of another piece or composition see the discussion of claim 166 above wherein stopping prevents the play count from increasing and hence prevents the rating from increasing and hence influences the rating toward a lower preference than it would have had if it had been experienced in it's entirety.

Regarding claim 174 and the limitation wherein the more favorable a said user's rating for a piece or composition, the sooner the piece or composition will be selected again see, for example, Fig. 13, Columns 17-19 etc. wherein it is understood that the filters are the ratings and as such affect the playback including how soon the piece or composition will be selected again.

Regarding claim 175 and the limitation wherein, when a said user's rating for an a said piece or composition is below a defined level of preference, the said piece or composition will not be selected again until at least a defined amount of time has elapsed from the prior playback of the said piece or composition see, for example, Col 17 lines

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25-50, wherein “songs I have not heard recent” will be satisfied at some defined amount of time after the filter has removed the content from the play list as set forth in, for example Claim 169, etc.

169. The file format of claim 161, wherein the dynamic portion contains references to one or more filters that can be used to query one or more databases, at least one of the filters being configured to remove content from a play list.

Regarding claim 176 and the limitation wherein a said piece or composition is not selected when a said user's rating for said piece or composition is below a defined level of preference see for example, claim 169

169. The file format of claim 161, wherein the dynamic portion contains references to one or more filters that can be used to query one or more databases, at least one of the filters being configured to remove content from a play list.

Regarding claim 211 and the limitation wherein said control actions are user actions to cause a piece or composition that has just finished playing, to start playing again; wherein a said user's rating is influenced toward a higher preference, by a said user control action or actions to start playing again see, for example, the rejection of claim 166 above wherein any action to play causes an increase in the play count and hence a higher preference.

Regarding claim 212, Plastina does not appear to expressly disclose the limitation wherein said control actions are user actions to search or find a specific piece

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or composition; wherein a said user's rating is influenced toward a higher preference, by a said user control action or actions to search or find a specific piece or composition.

Plastina does however clearly teach various methods of determining ratings and user interest in experienced media. Searching for a specific piece or composition connotes some level of interest in said piece or composition by said user. Further, per Col. 3, lines 33-40, reproduced immediately below:

“Additionally, the user can experience media content in other ways such as managing the media content, moving or copying the media content from one location to another, or a variety of other ways outside of simply listening to or playing the media content. All of these various operations imply, in some way, that the user has a certain care for or interest in the media content. The fact that the user went to media content and operated on it somehow implies that there is an implicit interest in that media content that is greater than simply playback. “

Therefore it would have been obvious to one of ordinary skill in the art to use the control action of searching as one of the various methods of rating a composition or piece as such is nothing more than another way of capturing a user's preference. One would be motivated to modify Plastina to have this capability for the benefit of providing the most accurate ratings for a user's experience.

Regarding claim 213 and the limitation wherein said control actions are user actions occurring while a sample of a piece or composition is playing, wherein said control actions cause the full piece or composition to be played, see the rejection of claim 166 above wherein it is understood that it is immaterial when the control actions are initiated.

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Regarding claim 217 and the limitation wherein the details of control actions include how the playback of a piece or composition was initiated by said user see Col. 7 lines 38-49 reproduced immediately below.

(33) As a user selects various pieces of content 208 to be rendered by the media-playing application, the experience-monitoring module 202 can make a note of this and can produce user metadata that is provided back into the user metadata portion of the piece of content. Thus, relevant current data that is associated with the user's content experience can be developed and associated with the particular content for future use.

Regarding claim 218 Plastina does not appear to expressly disclose the limitation wherein details of said control actions include the amount or portion of a piece or composition that was played. Plastina does however monitor user's behavior and as set forth in, for example, Col. 9, lines 10-15 the last played time is recorded. Col. 10, lines 8-17 also teaches USER custom parameters can be provided.

At the time of the invention it would have been obvious to one of ordinary skill in the art to monitor the amount or portion of a piece or composition that was played and to incorporate within Plastina for the purpose of applying metadata (for example, notes) to the appropriate area of a particular piece or composition. One would also be motivated to monitor the portion played in order to use this as another indication of the user's preferences as listening to the entire piece or composition connotes more interest than not listening to the entire piece or composition.

Regarding claims 232, 253, 257 and 261 and the limitation wherein the playback of a said selected piece or composition is initiated; when there are no pending user control actions available to be applied or satisfied see, for example, Figure 13, Col. 17, line 51 through Col. 18 line 4 etc. wherein at least one filter will affect the play list.

Regarding claim 233 and the limitation further comprising: playing a sequence of said selected pieces or compositions, when there are no pending user control actions available to be applied or satisfied see, for example, Figure 13, Col. 17, line 51 through Col. 18 line 4 etc. wherein at least one filter will affect the play list.

Regarding claim 234 and the limitation further comprising: playing, by a user-device without user action, a sequence of pieces or compositions; wherein the pieces and/or compositions were custom selected for said user by using said user's ratings see, for example, Figure 13, Col. 17, line 51 through Col. 18 line 4 etc. wherein at least one filter will affect the play list.

Regarding claim 235 and the limitation wherein a user-device responds substantially immediately to user control actions; and when there are no pending user control actions available to be applied or satisfied, the playback of a said selected piece or composition is automatically initiated see, for example, Figure 13, Col. 17, line 51 through Col. 18 line 4, Col. 7, lines 38-50, etc. wherein the users actions are monitored and the act of pressing the fast forward button causes automatic playback of the next piece or composition in the play list.

Regarding claim 236 and the limitation wherein the rating for a specific piece or composition is determined by using a plurality of control actions that were previously applied by the user on the specific piece or composition see, for example, Figures 5, 13, and associated descriptive text, metadata connotes control actions previously applied.

Regarding claim 237 and the limitation wherein a said user's rating for an associated piece or composition is determined using a plurality of individual said user control actions that occurred on a plurality of different occasions and/or at different user-devices; wherein said control actions were applied to the associated piece or composition see, for example, Col. 11, line 55 through Col. 12, line 63.

Regarding claim 238 and the limitation wherein said user's rating is determined using said user's control actions that occurred at a plurality of user devices; wherein information about said user's control actions or user's ratings is automatically distributed across at least one network or communication path to said plurality of user devices see, for example, Col. 11, line 55 through Col. 12, line 63 specifically Col. 12 lines 1-10.

Regarding claims 239, 254, 258 and 262 and the limitation wherein the magnitude of the rating for a piece or composition was: increased by certain user control actions and decreased by other user control actions, it must be appreciated that the metadata will include ALL of the user's actions and that these actions obviously will

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have positive and negative affects. That is, all of the metadata is taken into account, accordingly some of this data will include actions that satisfy the claimed limitation.

Regarding claim 240 and the limitation wherein: some user control actions cause the magnitude of the rating to be determined to be more favorable, and other user control actions cause the magnitude of the rating to be determined to be less favorable see, for example, Figures 5 and 13 and associated text, as well as Col. 17, line 51 through Col. 18, line 21 wherein it is understood that the filters are filtering through ratings that have been adjusted by users actions.

Regarding claim 241 and the limitation wherein a prior magnitude of the user's rating for a said piece or composition, is adjusted to a higher or lower magnitude of preference, by using new control actions by the user that were applied on the piece or composition, see, for example, the teachings surrounding adjusting ratings from 4 to 5 in, for example, Col. 8, line 50 through Col. 9, line 8 based upon the USER UPDATE TIME.

Regarding claim 242 and the limitation further comprising: updating a said rating for a piece or composition, by adjusting the magnitude of the previous rating, up or down by an amount that is based upon details of a newer control action by the user on the piece or composition see, for example, the teachings surrounding adjusting ratings from 4 to 5 in, for example, Col. 8, line 50 through Col. 9, line 8 based upon the USER UPDATE TIME.

Regarding claim 243 and the limitation further comprising: adjusting the magnitude of a said user's rating toward a more favorable or less favorable preference, based on the details of a said control action see, for example, the teachings surrounding adjusting ratings from 4 to 5 in, for example, Col. 8, line 50 through Col. 9, line 8 based upon the USER UPDATE TIME.

Regarding claims 244, 255, 259 and 263 and the limitation wherein a said rating for a piece or composition, is stored in a memory or memories, until an updated rating, based on newer control actions by the user, is available see, for example, the teachings surrounding adjusting ratings from 4 to 5 in, for example, Col. 8, line 50 through Col. 9, line 8 based upon the USER UPDATE TIME.

Regarding claim 245 and the limitation wherein a said rating is stored in one or more memories until an updated magnitude of the rating is determined by using newer control actions by the user see, for example, the teachings surrounding adjusting ratings from 4 to 5 in, for example, Col. 8, line 50 through Col. 9, line 8 based upon the USER UPDATE TIME.

Regarding claim 246 and the limitation wherein a said user's rating is updated by adjusting the magnitude of the prior rating, toward a higher or lower preference, based on the details of a newer user control action that was applied to the piece or composition see,

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for example, the teachings surrounding adjusting ratings from 4 to 5 in, for example, Col. 8, line 50 through Col. 9, line 8 based upon the USER UPDATE TIME.

Regarding claim 247 and the limitation wherein the details about individual control actions, that occurred on a plurality of different occasions and/or at different user devices, were stored in one or more memories; and a plurality of the stored details, that were applied to the same piece or composition, were used to determine a said user's rating for that piece or composition see, for example, the teachings surrounding adjusting ratings from 4 to 5 in, for example, Col. 8, line 50 through Col. 9, line 8 based upon the USER UPDATE TIME.

Regarding claim 248 and the limitation wherein the details about of each individual control actions is saved for a plurality of control actions; wherein a said rating is determined by using the saved details about individual control actions for a plurality of said control actions see, for example, Figures 5, 13, and associated descriptive text.

Regarding claim 249 and the limitation further comprising:

storing, in a memory or memories, the details about each individual control action, for a plurality of control actions on a said piece or composition, that occurred on different occasions and/or at different user devices;

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using the stored details about individual control actions to determine the magnitude of the user's rating for the piece or composition see, for example, Figures 5, 13, and associated descriptive text.

Regarding claim 250 and the limitation further comprising:

storing, in a memory or memories, the details about each individual control action, for a plurality of control actions on a said piece or composition, that occurred on different occasions and/or at different user devices;

processing, in the order that control actions occurred, a plurality of the stored details about control actions to determine the magnitude of the user's rating for the piece or composition see, for example, Figures 5, 13, and associated descriptive text.

Regarding claim 251 and the limitation further comprising:

storing, in a memory or memories, the details about each individual control action, for a plurality of control actions on a said piece or composition, that occurred on different occasions and/or at different user devices;

processing, in the order that control actions occurred, a plurality of the stored details about control actions to determine the magnitude of the user's rating for the piece or composition; wherein the user's rating is: adjusted toward a more favorable magnitude by some control actions and adjusted to a less favorable magnitude by other control actions see, for example, Figures 5, 13, and associated descriptive text.

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10. **Claims 168-170 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plastina as applied to claims 163-167, 174-176, 211-213, 217, 218 and 232-263 above and further in view of US Patent 7,146,329 to Conkwright et al. (Conkwright) and "Name that Tune" from Wikipedia.**

Plastina as explained above discloses applicants invention as claimed, including the teachings that there may be additional metadata of interest that the user can configure, however Plastina does not appear to specifically disclose the limitations of claims 168-170.

A. Conkwright teaches that it is known to monitor how fast or slow a user stops a currently playing piece or composition (channel/show) in, for example, Col. 31, lines 55+ reproduced immediately below:

"Relevant viewing events may comprise events that represent some pattern describing viewing behaviors. Events may be pre-defined events such as "changing the channel at the end of a show" or "**changing the channel at the beginning of a commercial,**" or they may be definitions that are more arbitrary, such as "**changing the channel twice in 5 seconds before changing the channel 3 times in the next 10 seconds.**" Events may result from individual behavior data mining based on series analysis and behavior pattern determination, and then reporting such patterns in a simple form. By way of example, the present invention may learn that a particular graphic category may not get home until 6:00 pm, then views a news channel for half an hour, then turns the set-top box off for an average of a half hour, presumably for dinner."

Conkwright further teaches in Col. 2 lines 2-5 wherein it was known to "intentionally leave the television "on" to a certain channel to insure higher ratings..."

Ergo, at the time of the invention it would have been obvious to one of ordinary skill in the art to apply the teachings of Conkwright to any media

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monitoring system that applies ratings to programs. Further, since it is known that leaving the TV on intentionally insures higher ratings, then the opposite would also appear to be true, i.e. changing the station as soon as a program comes on connotes a lower rating. Which means the soonest possible switch would apply the lowest possible rating because the longest viewing receives the highest rating.

B. "Name that Tune" is a notoriously old and well known popular television game show that tested the knowledge of music/songs of contestants and rewarded them for the shortest recognition time. At the time of the invention it would have been obvious to one of ordinary skill in the art to include a measure of how fast a user took action with regard to ratings and to have a higher rating for faster behavior as such is clearly an indication of an individuals ability to recognize and affect the playback of said composition.

Regarding claim 168 and the limitation wherein the sooner said user took a control action or actions to stop a currently playing piece or composition, in-order to experience another piece or composition; the more said user's rating, for the stopped piece or composition, is influenced toward a lower preference, it would have been obvious to one of ordinary skill to modify Plastina with the teachings of Conkwright and "Name that Tune" to include monitoring how fast or slow, i.e. the sooner the users takes control action to stop a currently playing piece or composition, the more the rating is

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influenced toward a lower preference for the purpose of creating as detailed metadata as possible in order to create a highly personalized play list specifically modified by the users actions. Again, as evidenced by "Name that Tune" it is a known human instinct to react quickly to music and the fact that the specific piece or composition is being skipped quickly can connote distaste for that particular piece or composition.

Regarding claim 169 and the limitation wherein, a said user's rating is at least partially based on how quickly said user took control action to avoid a currently playing piece or composition; when said control action occurred after said user has experienced said avoided piece or composition for at least a recognition-time see the rejection of claim 168 immediately above with regard to Name that Tune and recognition time.

Regarding claim 170 and the limitation wherein a said user's rating is at least partially based on how quickly said user took control action to avoid a playing piece or composition; wherein the sooner the user took an avoiding action, the more the user's rating, for the avoided piece or composition, is adjusted toward a lower preference again, see the rejection of claim 168 above.

11. Claims 163-167, 174-176, 211-213, 217, 218, 232-237 and 239-263 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,732,216 to Logan et al. (Logan)

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Regarding claims 163, 252, 256 and 260, Logan discloses an apparatus-implemented method for personalized music or entertainment, the method comprising:

(1) capturing, at a user-device, details of control actions (known as metadata) by a user on pieces or compositions; wherein said control actions:

- affect the current playback of a piece or composition, or
- find or select a piece or composition, or
- designate a piece or composition for playback;

(2) storing in one or more memories, a plurality of ratings associated with the user; wherein a rating, indicating a magnitude of preference of the user, is associated with each piece or composition; wherein the magnitude of the rating for the associated piece or composition was determined by using at least some of the details of control actions by the user on the associated piece or composition

(3) initiating, the playback of at least one piece or composition that was custom selected for said user by using said user's ratings, in for example, the Abstract (reproduced and expounded upon immediately below), Figures 1, 3, 4, Col. 1, lines 42-49 and 55-58, Col. 2, lines 24-46, Col. 4 lines 59+, Col. 5 lines 12-15, 35-45 and 60+, Col. 6, lines 8-67, etc.

“An audio program and message distribution system in which a host system organizes and transmits program segments to client subscriber locations. The host organizes the program segments by subject matter and creates scheduled programming in accordance with preferences associated with each subscriber (reads on limitation (3) above). Program segments are associated with descriptive subject matter segments, and the subject matter segments may be used to generate both text and audio cataloging

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presentations to enable the user to more easily identify and select desirable programming. A playback unit at the subscriber location reproduces (reads on limitation (3) above, reproduces=initiating) the program segments received from the host and includes mechanisms for interactively navigating among the program segments. A usage log is compiled to record the subscriber's use of the provided program materials, to return data to the host for billing, to adaptively modify the subscriber's preferences based on actual usage (reads on limitations (1) and (2) above, capturing and storing=usage log), and to send subscriber-generated comments and requests to the host for processing. Voice input and control mechanisms included in the player allow the user to perform hands-free navigation of the program materials and to dictate comments and messages which are returned to the host for retransmission to other subscribers. “

Logan does not appear to specifically disclose that the control actions are user actions that affect the playback of a piece or composition **in the same manner as applicant.**

Logan does however set forth in, for example, Figure 3, Columns 9-14, etc. a multitude of parameters that are monitored including volume, skip, rewind, etc..

At the time of the invention it would have been obvious to one of ordinary skill in the art to apply the teachings of Logan with regard to the user parameters that are monitored and have modified Logan to include parameters that affect the playback, search, selection, or designation of a piece or composition.

One would have been motivated to make such a modification for the benefits of more accurately monitoring user habits for the benefit of selecting compositions to be played for the user that are more in line and accurately reflect the user's preferences.

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Regarding claim 164 and the limitation wherein said control actions are user actions to repeat or replay a piece or composition that previously played; wherein a said user's rating is influenced toward a higher preference, by a said user control action or actions to repeat or replay, the piece or composition see, for example, Col. 20, lines 1-17, specifically lines 4-6 reproduced immediately below.

“...program(sic) which are frequently selected from the catalog and listened to may have their importance values increased.”

Regarding claim 165 and the limitation wherein said control actions are user actions to select or designate a particular piece or composition for playback; wherein a said user's rating is influenced toward a higher preference, by a user control action or actions that select the piece or composition for playback see, for example, Col. 20, lines 1-17, specifically lines 4-6 reproduced immediately below.

“...program(sic) which are frequently selected from the catalog and listened to may have their importance values increased.”

Regarding claim 166 and the limitation wherein said control actions are user actions to skip or forward-past the rest of a currently playing piece or composition; wherein a said user's rating is influenced toward a lower preference, by a user control action or actions that skip or forward-past the rest of the piece or composition that is currently playing see, for example, Col. 20, lines 1-17, specifically lines 1-4 reproduced immediately below.

“...program segments which are started but frequently skipped while in progress may have their importance value decreased...”

Regarding claim 167 and the limitation wherein said control actions are user actions to stop a currently playing piece or composition; and initiate the play of another piece or composition; wherein a said user's rating associated with the playing piece or composition is influenced toward a lower preference, by a user control action or actions that stop the piece or composition that is playing; and initiate the play of another piece or composition see the discussion of claim 166 above wherein stopping and initiating is the same as skipping.

Regarding claim 174 and the limitation wherein the more favorable a said user's rating for a piece or composition, the sooner the piece or composition will be selected again see, for example, Col. 19, lines 61-65 reproduced immediately below.

“Another segment may also be relevant to the same subject, but with a different level of importance to that subject. These fields may be used by the host as a weighting factor used to route programs of greater probable interest to the subscriber.”

Regarding claim 175 and the limitation wherein, when a said user's rating for an a said piece or composition is below a defined level of preference, the said piece or composition will not be selected again until at least a defined amount of time has elapsed from the prior playback of the said piece or composition see, for example, Col. 25 line 63 through Col. 26, line 16 reproduced immediately below.

Controlling the Quantity of Advertising Delivered

(122) The rate at which advertising is actually inserted by the player is controlled by the ChargeLevel value in the Subscriber record for each

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subscriber. The ChargeLevel value (a number from 0-255) indicates the rate at which a subscriber is willing to accept advertisements. An advertisement duration count variable (not shown) maintained by the player 103 accumulates the total duration of actually played advertising while a program duration count variable accumulates the total duration of actually played programming. **An integer division of these two duration count values indicates the proportion of time being devoted to advertising. If this proportion falls below a threshold value determined by the value of ChargeLevel, additional advertising is inserted between program segments until the desired proportion is again reached. In this way, advertising skipped by a subscriber will be replaced later by different advertising to yield the proper proportion of programming to advertising, thereby achieving the subscription charge rate requested by the user.** “ (Emphasis added)

Regarding claim 176 and the limitation wherein a said piece or composition is not selected when a said user's rating for said piece or composition is below a defined level of preference see the rejection of claim 175 above.

Regarding claim 211 and the limitation wherein said control actions are user actions to cause a piece or composition that has just finished playing, to start playing again; wherein a said user's rating is influenced toward a higher preference, by a said user control action or actions to start playing again see, for example, the rejection of claim 166 above.

Regarding claim 212 and the limitation wherein said control actions are user actions to search or find a specific piece or composition; wherein a said user's rating is influenced toward a higher preference, by a said user control action or actions to search or find a specific piece or composition see, for example, Col. 20, lines 1-17, specifically lines 4-6 reproduced immediately below.

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“...program(sic) which are frequently selected from the catalog and listened to may have their importance values increased.”

Regarding claim 213 and the limitation wherein said control actions are user actions occurring while a sample of a piece or composition is playing, wherein said control actions cause the full piece or composition to be played, see the rejection of claim 166 above wherein it is understood that it is immaterial when the control actions are initiated.

Regarding claim 217 and the limitation wherein the details of control actions include how the playback of a piece or composition was initiated by said user see, for example, Col. 20, lines 1-17, specifically lines 4-6 reproduced immediately below.

“...program(sic) which are frequently selected from the catalog and listened to may have their importance values increased.”

Regarding claim 218 and the limitation wherein details of said control actions include the amount or portion of a piece or composition that was played see, for example, Col. 15, lines 9-19 reproduced immediately below.

“The fifth command, a "MARK" command at 280, is used to place a "bookmark" into the usage log which identifies a program segment, or a portion of a program segment, which the listener wishes to designate for future use. “

Regarding claims 232, 253, 257 and 261 and the limitation wherein the playback of a said selected piece or composition is initiated; when there are no pending user

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control actions available to be applied or satisfied see, for example, Figure 4, Col. 15, line 65 through Col. 19, line 20.

Regarding claim 233 and the limitation further comprising: playing a sequence of said selected pieces or compositions, when there are no pending user control actions available to be applied or satisfied see, for example, Figure 4, Col. 15, line 65 through Col. 19, line 20.

Regarding claim 234 and the limitation further comprising: playing, by a user-device without user action, a sequence of pieces or compositions; wherein the pieces and/or compositions were custom selected for said user by using said user's ratings see, for example, Figure 4, Col. 15, line 65 through Col. 19, line 20.

Regarding claim 235 and the limitation wherein a user-device responds substantially immediately to user control actions; and when there are no pending user control actions available to be applied or satisfied, the playback of a said selected piece or composition is automatically initiated see, for example, Figure 4, Col. 15, line 65 through Col. 19, line 20.

Regarding claim 236 and the limitation wherein the rating for a specific piece or composition is determined by using a plurality of control actions that were previously

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applied by the user on the specific piece or composition see, for example, see, for example, Figure 4, Col. 15, line 65 through Col. 19, line 20.

Regarding claim 237 and the limitation wherein a said user's rating for an associated piece or composition is determined using a plurality of individual said user control actions that occurred on a plurality of different occasions and/or at different user-devices; wherein said control actions were applied to the associated piece or composition see, for example, Figure 4, Col. 15, line 65 through Col. 19, line 20.

Regarding claims 239, 254, 258 and 262 and the limitation wherein the magnitude of the rating for a piece or composition was: increased by certain user control actions and decreased by other user control actions, see the rejection of corresponding parts above.

“By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased. “

Regarding claim 240 and the limitation wherein: some user control actions cause the magnitude of the rating to be determined to be more favorable, and other user control actions cause the magnitude of the rating to be determined to be less favorable see the rejection of corresponding parts above.

“By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased. “

Regarding claim 241 and the limitation wherein a prior magnitude of the user's rating for a said piece or composition, is adjusted to a higher or lower magnitude of preference, by using new control actions by the user that were applied on the piece or composition, see the rejection of corresponding parts of claims above.

“By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased. “

Regarding claim 242 and the limitation further comprising: updating a said rating for a piece or composition, by adjusting the magnitude of the previous rating, up or down by an amount that is based upon details of a newer control action by the user on the piece or composition see the rejection of corresponding parts of claims above.

“By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased. “

Regarding claim 243 and the limitation further comprising: adjusting the magnitude of a said user's rating toward a more favorable or less favorable preference, based on the details of a said control action see the rejection of corresponding parts of claims above.

“By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased. “

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Regarding claims 244, 255, 259 and 263 and the limitation wherein a said rating for a piece or composition, is stored in a memory or memories, until an updated rating, based on newer control actions by the user, is available see the rejection of corresponding parts of claims above.

“By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased. “

Regarding claim 245 and the limitation wherein a said rating is stored in one or more memories until an updated magnitude of the rating is determined by using newer control actions by the see the rejection of corresponding parts of claims above.

“By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased. “

Regarding claim 246 and the limitation wherein a said user's rating is updated by adjusting the magnitude of the prior rating, toward a higher or lower preference, based on the details of a newer user control action that was applied to the piece or composition see the rejection of corresponding parts of claims above.

“By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased. “

Regarding claim 247 and the limitation wherein the details about individual control actions, that occurred on a plurality of different occasions and/or at different user

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devices, were stored in one or more memories; and a plurality of the stored details, that were applied to the same piece or composition, were used to determine a said user's rating for that piece or composition see the rejection of corresponding parts of claims above.

“By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased. “

Regarding claim 248 and the limitation wherein the details about of each individual control actions is saved for a plurality of control actions; wherein a said rating is determined by using the saved details about individual control actions for a plurality of said control actions see the rejection of corresponding parts of claims above.

“By way of example, program segments which are started but frequently skipped while in progress may have their importance value decreased while program which are frequently selected from the catalog and listened to may have their importance values increased. “

Regarding claim 249 and the limitation further comprising:

storing, in a memory or memories, the details about each individual control action, for a plurality of control actions on a said piece or composition, that occurred on different occasions and/or at different user devices;

using the stored details about individual control actions to determine the magnitude of the user's rating for the piece or composition see, for example, Figure 2 and associated descriptive text.

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Regarding claim 250 and the limitation further comprising:

storing, in a memory or memories, the details about each individual control action, for a plurality of control actions on a said piece or composition, that occurred on different occasions and/or at different user devices;

processing, in the order that control actions occurred, a plurality of the stored details about control actions to determine the magnitude of the user's rating for the piece or composition see, for example, Figures 2, 4, 5 and associated descriptive text.

Regarding claim 251 and the limitation further comprising:

storing, in a memory or memories, the details about each individual control action, for a plurality of control actions on a said piece or composition, that occurred on different occasions and/or at different user devices;

processing, in the order that control actions occurred, a plurality of the stored details about control actions to determine the magnitude of the user's rating for the piece or composition; wherein the user's rating is: adjusted toward a more favorable magnitude by some control actions and adjusted to a less favorable magnitude by other control actions see, for example, Figures 5 and 6 and associated descriptive text.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tsutsumi and Herberger et al. disclose systems of manipulating musical/entertainment data.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL L. GREENE JR. whose telephone number is (571)272-6876. The examiner can normally be reached on Mon-Thur.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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